IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 10090 OF 2004

RAMMOHAN ANAND KARPE ..

PETITIONER Vs.

SMT. SUNANDA Wd/o RAMAKANT DESAI & ORS. .. RESPONDENTS

Mr. U. J. Makhija for petitioner

Mr. A. A. Kochrekar for R.

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-3-2005

P.C.

Petitioner-original defendant has challenged order dated 5th October, 2004 passed by Small Causes Court at Mumbai in Interim Notice No. 2210 of 2004 in R A E & R. Suit No. 856/1429/2002.

2. It appears that the defendant had executed a power of attorney in favour of his sister-in-law Mrs. Sheetal Karpe. As the husband of Sheetal Karpe had

to go to Qatar for work, Sheetal Karpe also had to leave India. Therefore, before leaving for Qatar she substituted Smt. Sharda Karpe the defendant's mother as the constituted attorney for the defendant. Smt. Sharda Karpe is 89 years old. She had a fall. She sustained injuries on account of the fall. Because of her ill health Sharda Karpe could not take prompt steps and hence the order dated 23/7/03 for placing the matter for ex parte hearing came to be passed. Sharda Karpe, therefore, took out the instant notice. The learned Judge found the explanation given in the application not satisfactory. He discharged the notice. Hence this writ petition.

3. I have heard the learned counsel for the parties. There is no challenge to the fact that Sharda Karpe is an old lady. She is 89 years old. She had a fall. It is her case that she sustained injuries and, therefore, she could not take prompt steps in the matter.

4. In the peculiar facts and circumstances of the case, in my opinion, the delay deserves to be condoned and the defendant should be given a chance to file written statement . However, the defendant will have to be saddled with cost. In my opinion following order should serve the ends of justice;

Impugned order dated 5/10/04 is set aside.

On the petitioner-defendant paying costs quantified at Rs.2000/- to the respondent the defendant is permitted to file written statement within a period of four weeks from today.

Payment of cost shall be condition precedent for filing the written statement.

The trial court is directed to hear and dispose of the suit as expeditiously as possible and at any rate within a period of one and half years from the date of receipt of this order by it.

Parties to cooperate.

Petition is disposed of.

Parties to act on authenticated copy of this order.

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